

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

BRUCE WINSTON GEM CORP.,

Plaintiff,

v.

HARRY WINSTON, INC. and
HARRY WINSTON S.A.,

Defendants.

"ECF CASE"

Civil Action No. 09 CV 7353 (JGK)

**DECLARATION OF YARON NHAISSI IN
OPPOSITION TO DEFENDANTS'
MOTION TO DISMISS**

YARON NHAISSI declares pursuant to 28 U.S.C. §1746:

1. I am a Managing Director of plaintiff Bruce Winston Gem Corp. ("BWG"), and submit this Declaration in opposition to defendants' motion to dismiss the amended complaint in this action.

2. My responsibilities for BWG include marketing, advertising and sales of jewelry, diamonds and gem stones under the BRUCE WINSTON trademark. Oren Nhaissi, Managing Director, and Chista Ghafari, Executive Vice President, also work as BWG's sales representatives. We are actively engaged in marketing BWG's BRUCE WINSTON product line in the United States as well as in markets throughout the world.

3. I have read the amended complaint in this action and can verify that the allegations regarding BWG's present, and planned expanded, marketing and use of the BRUCE WINSTON trademark in paragraphs 15-17, 36 and 39-42 (which are set forth below) are true and accurate:

15. Since its inception, BWG has marketed and sold fine jewelry, diamonds and gem stones from its business offices on the third floor at 608 Fifth Avenue, New York City. BWG presently has three sales representatives including Chista Ghafari, Yaron Nhaissi and Oren Nhaissi. BWG markets jewelry, diamonds and gem stones at wholesale and to retail customers on an appointment only basis. BWG's jewelry offerings and sales have included rings, bracelets, necklaces, and loose diamonds and emeralds. As of the present date, BWG has an inventory of jewelry, diamonds and emeralds having a wholesale value in excess of \$300,000. In the conduct of its business, BWG purchases jewelry, diamonds and gem stones for its wholesale and retail business to meet specific customer requirements. BWG also offers jewelry that it obtains from wholesale industry sources on a consignment basis.

16. BWG works with designers in the industry to create original jewelry items for inventory and to meet specific customer requests. Representative BWG jewelry items that BWG has sold are collected as Exhibit 2.

17. The signage at BWG's business offices prominently displays BWG's trade name BRUCE WINSTON GEM CORP. BWG's business stationery also prominently displays the BWG trade name. All jewelry sold by BWG is delivered to its customers in boxes labeled with the trademark BRUCE WINSTON GEM and a BW Logo. Attached as Exhibit 3 are representative specimens of BRUCE WINSTON GEM jewelry boxes. When space on the jewelry pieces permits, the hallmark BRUCE WINSTON is laser stamped directly into BWG's jewelry pieces. BWG's total sales of jewelry, diamonds and gem stones from its organization in 2001 to the present under the BRUCE WINSTON Trademarks have been in excess of \$16 million.

Inscribed

36. During the course of the ongoing TTAB proceeding, BWG acquiesced to and complied with Defendants' demands that BWG restrict its marketing and sales activities. Settlement discussions have failed. BWG is now committed to proceeding with its business without restriction, including displaying its BRUCE WINSTON jewelry at industry trade shows, placing BRUCE WINSTON jewelry pieces with New York City auction houses, and advertising its BRUCE WINSTON jewelry pieces in major media outlets, and has commenced such marketing and sales activities.

39. BWG has put in place definite marketing plans to expand its business in the marketplace without restriction.

40. In mid-August 2009, BWG retained the advertising agency Bleecker and Sullivan in New York City to create promotional and advertising copy and a new corporate logo and trade dress. Specimens showing BWG's new stationary and new business cards of its executives and sales representatives are annexed as Exhibit 11.

41. BWG has commenced a fall advertising campaign, including placement of an advertisement in the New York Times. A copy of an advertisement that BWG placed in the New York Times on October 15, 2009 is annexed as Exhibit 12. An advertisement that will appear in the November issue of RAPAPORT Diamond Report is annexed as Exhibit 13. BWG plans to continue to advertise and promote its business in general circulation newspapers and trade industry publications.

42. BWG plans to have a booth displaying and offering its BRUCE WINSTON jewelry items at the JA New York Winter Show, a jewelry industry trade show, which is scheduled to take place on February 28, 2010 through March 2, 2010 at the Javits Center in New York City. The JA Winter Show provides its exhibitors with access to over 8,000 retailers. A copy of a brochure describing the JA Winter Show is attached as Exhibit 14.

4. A true and accurate copy of the advertisement that appeared in the November issue of RAPAPORT Diamond Report, together with the cover and "contents" pages of the November 2009 issue, is annexed as Exhibit 1. The same advertisement will also appear in the December and January issues of RAPAPORT Diamond Report. The RAPAPORT Diamond Report is the primary source of diamond price and market information, and provides the latest news, global market reports and the best in-depth analysis of the diamond market.

5. The advertisement that appeared in the RAPAPORT Diamond Report also appears at BWG's website – <http://www.bwgem.com>.

6. In paragraph 42 of the amended complaint, BWG stated that it had plans to have a booth at the JA New York Winter Show scheduled for February 28, 2010 through March 2, 2010 at the Javits Center in New York City. At the time of filing the amended complaint, the application to register for the show was not available. Attached as Exhibit 2 is a true and accurate copy of the online registration page for the show (<http://www.ja-newyork.com/janewyork/2695/attendee/register.jsp>), which shows that registration did not open until "late Fall 2009." BWG has since registered for the show, and been assigned Booth No. 1363. A true and accurate copy of the current list of exhibitors for the show, printed November 18, 2009 from the website <http://www.ja-newyork.com>, is annexed as Exhibit 3.

7. The JA Winter Show is a leading jewelry industry trade show, which is widely attended by thousands of retailers, including independent jewelry retailers, jewelry chain department stores, mass merchants, and online, TV and catalog retailers. A true and accurate copy of a brochure for the show is annexed as Exhibit 4 (also annexed to the amended complaint as Ex. 14), which describes the show as follows:

The perfect opportunity to connect with over 9,000 quality buyers!

The perfect time for exhibitors to introduce the latest trends and over 8,000 expected retailers in attendance to better assess post-holiday inventory

I declare under penalty of perjury that the foregoing is true and correct.

Dated: New York, New York
December 4, 2009



YARON NHAISSI

CERTIFICATE OF SERVICE

I hereby certify that, on the same date of execution of this Certificate, a copy of the foregoing DECLARATION OF YARON NHAISSI IN OPPOSITION TO DEFENDANTS' MOTION TO DISMISS was served by depositing same in the United States mail, first-class postage prepaid, addressed to:

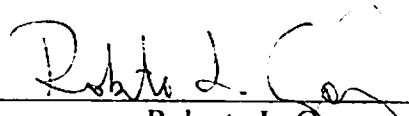
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Harry Winston, Inc. and
Harry Winston S.A.*

Dated: New York, New York
December 4, 2009



Roberto L. Gomez